IN THE HIGH COURT OF BOMBAY AT GOA
***

APPEAL FROM ORDER NO. 57 OF 2002

Mr. Francis John Dias,
major, s/o Jose Anton
Dias, service, r/o
Sauntavaddo, Assagao,
Bardez, Goa. ... Appellant.

Versus

1. Mrs. Maria Arlette
D'Lima Fernandes
Athaide, major,

2. Mr. Braz Antonio Agnelo
Athaide, alias Braz
Anthony Athaide, major,
service, both r/o
Flat no.9, Sunshine Bldg.,
Bernard Guedes Road,
Panaji, Ilhas, Goa,
represented by their attorney
Mr. Francisco Wali de Lima
Fernandes, r/o Fontainhas,
Panaji, Goa,

3. Mrs. Francis John Dias,

4. Mr. Edwin Andrade, s/o
late Pascoal Andrade,

5. Mr. Jose Andrade, s/o late
Pascoal Andrade,

6. Mr. Albert Andrade,
s/o late Pascoal Andrade,
and

7. Mr. Anton Athaide, bachelor,
s/o late John Athaide,
all r/o Assagao, Bardez, Goa. ... Respondents.

Mr. V. Menezes, advocate for the appellant.

Shri J. P. Mulgaokar, advocate respondent nos. 1 and 2.

CORAM : F. I. REBELLO, J.

DATE : 7th August, 2003.

ORAL ORDER

Heard forthwith.

The appellant by the present appeal impugns the Order dated 27th March, 2002, whereby the trial Court has allowed the prayers in C.M.A. No.126/2001. It is not necessary to advert to the facts as the main contention on behalf of the learned counsel for the appellant is that the arguments in C.M.A. No.126 of 2001 were not heard at all, as at the relevant time what was being heard was some other proceedings. An affidavit to that effect has been filed of the advocate who appeared before the trial Court. It is, therefore, submitted that as no opportunity was given to the appellant, the impugned Order is liable to be set aside and the matter remanded to the trial Court.

On the other hand, on behalf of the respondents their learned counsel contends that what the Court will have to look into is the Order of the Court which discloses that the parties were heard and then the Order was passed. If it was the contention of the appellant as now contended that they had not been heard, the proper remedy would be to have moved the trial Court by appropriate proceedings. That has not been done. In these circumstances, what the Court must consider is the Order impugned and considering the law as now settled this Court should not on that ground interfere with the impugned Order.

2. Having heard learned counsel, in my opinion, a perusal of the roznama entries coupled with the affidavit

of the counsel who appeared before the trial Court, could clearly demonstrate that no arguments were heard on C.M.A. No. 126 of 2001, wherein the impugned Order came to be passed. That being the case there was denial of fair opportunity to the appellant herein.

In the light of that, the impugned Order dated 27th March, 2002, is set aside. C.M.A. No.126 of 2001 is remanded to the trial Court for re-consideration and hearing the matter on merits after giving opportunity to both the parties. The Appeal From Order stands disposed of accordingly. No order as to costs.

F. I. REBELLO,J.

mc.